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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 855/2024, CRL.M.A. 19637/2024 and

CRL.M.A. 19638/2024

RAJEEV

.....Petitioner

Through: Mr.Hitain Bajaj, Advocate

versus

ADITI ROORKIWAL

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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08.07.2024

1. By way of present petition, the petitioner seeks to assail the order dated 07.05.2024 passed by learned Principal Judge, Family Court, Karkardooma, Delhi in MT No. 185/2021 titled as “Aditi Roorkiwal vs Rajeev”, whereby the petitioner has been directed to pay interim maintenance @ Rs.20,000/- per month from the date of filing of the application.

2. Facts, necessary for the adjudication are that the petitioner and respondent got married on 06.06.2017 at Ghaziabad, Uttar Pradesh, however, they have been living separately since 13.04.2019. The respondent filed several cases including one under Section 125 Cr.P.C. thereby seeking maintenance @ Rs.40,000/- per month. In the aforesaid proceedings under Section 125 Cr.P.C., the respondent filed an application seeking interim maintenance @ Rs.60,000/- per month.

During the course of hearing on the application for interim maintenance, the respondent contended that she was not working and was



entirely dependent upon her parents for her day-to-day expenses. She further stated that the petitioner was a MDS and was earning Rs.2 lacs per month. On the other hand, the petitioner claimed that the respondent was a BDS and earning Rs.35,000/- per month. He further stated that he was a MDS and was working as a consultant at his father's clinic, earning Rs.18,585.5/- per month. After considering the submissions made by the parties and the material placed on record, the impugned order came to be passed.

3. Learned counsel for the petitioner contends that the impugned order has been passed without due consideration of the facts and circumstances of the case. It is contended that the respondent, being well-qualified and holding a BDS degree, has earning capacity. This is evidenced from the fact that the respondent was gainfully employed prior to her marriage and she even continued to work for some time post her marriage. It is contended that the aforesaid factum of respondent having been previously gainfully employed was deliberately concealed at the time of filing of the maintenance petition as well as the application for interim maintenance. Considering the same, the respondent is not entitled to the interim maintenance as granted by the learned Principal Judge. In support of his submission, learned counsel for the petitioner has referred to the decisions of Division Bench of this Court in Niharika Ghosh v. Shankar Ghosh reported as **2023 SCC OnLine Del 5624**, Kusum Sharma v. Kuldeep Sharma reported as **2023 SCC OnLine Del 6272** and Renu Rana v. Ajay Rana reported as **2023 SCC OnLine Del 6623**.

4. I have heard learned counsel for the petitioner and have also gone through the material placed on record.

5. At the outset, it must be noted that the impugned order relates to grant



of interim maintenance only and that the proceedings continue to subsist inasmuch as the main petition under Section 125 Cr.P.C. is yet to be conclusively decided.

A perusal of the impugned order, copy of which has been placed on record, would show that the petitioner had raised similar contentions at the time of adjudication of the interim maintenance application and had further argued that the respondent was gainfully employed, with an income of Rs.35,000/- per month.

6. The learned Principal Judge noted that the mere fact that the respondent is highly qualified and could earn income, could not be the reason for denial of interim maintenance. Insofar as the contention relating to the respondent being gainfully employed and earning Rs.35,000/- was concerned, the petitioner had relied upon the Income Tax Returns (ITRs) filed by the respondent for the assessment years 2015-16, 2016-17 and 2018-19, which reflected respondent's gross income to be Rs.2,47,600/-, Rs.2,89,000/- and Rs.3,51,000/- respectively.

Taking note of the fact that the ITRs related to period prior to the filing of the maintenance petition, it was observed that the same could not be used to prove respondent's income during the relevant period.

7. On the aspect of petitioner's income, it was noted that though the petitioner had contended that he was earning monthly salary of Rs.18,585/-, however, he had failed to produce any material/evidence to substantiate the same. Further, taking note of the minimum wages notified by Govt. of Delhi for graduate employees, the Court expressed its disbelief upon the fact that the petitioner was earning an income so near to the minimum wage rate.

The learned Principal Judge further took note of the ITRs filed by the



petitioner for the assessment years 2019-20, 2020-21 and 2021-22 wherein his gross total income was noted as Rs.4,68,200/-, Rs.2,29,870/- and Rs.1,42,000/- (after litigation expenses) respectively. Taking cue from the same, it was observed that the contention of the petitioner qua his income could not be believed. Upon a perusal of the entire material on record, petitioner's carry home salary was assessed to be Rs.60,000/- per month.

8. After noting the entire factual situation, as discussed below, the impugned order came to be passed, whereby the petitioner was directed to pay interim maintenance @ Rs.20,000/- per month from the date of the filing of interim application till May, 2025. While passing the impugned order, the Court further noted that the disputed questions relating to the true income, assets and liabilities of the parties can be decided at the stage of trial.

9. The only contention raised before this Court is that the respondent is qualified and capable of earning. However, this aspect in and of itself cannot be the reason for altering the maintenance order. The Supreme Court in the case of Shailja & Anr. v. Khobbanna reported as **(2018) 12 SCC 199**, observed that 'capable of earning' and 'actual earning' are two different requirements. Merely because the wife is capable of earning cannot be sufficient reason to reduce the maintenance awarded by the Court.

Further, in the considered opinion of this Court, the impugned order suffers from no infirmity inasmuch as the same has been passed after due consideration of the facts of the case. There is no material placed on the record that respondent's stand is false. Also, as is evident from the order itself, the same has been passed granting interim maintenance till May, 2025, whereafter the question of interim maintenance would be reconsidered



in case the trial in the case/main petition is not concluded. The contentions raised before this Court are similar to those raised before the learned Principal Judge, which have been duly considered and in which consideration, this Court finds no error. Insofar as the Division Bench decisions relied upon by the petitioner are concerned, I have gone through the same and find that the same are distinguishable on facts.

However, it is clarified that in case the petitioner comes across any material to substantiate his contentions, he may produce the same before the learned Principal Judge for proper and final disposal of the maintenance petition filed under Section 125 Cr.P.C or alteration of the order under Stion 127 Cr.P.C..

10. Consequently, the petition is dismissed alongwith pending applications.

11. Needless to state that in case at time of conclusion of trail, the learned Principal Judge comes to a conclusion that any higher or lesser amount is to be given, appropriate adjustment, if any, be also provided.

MANOJ KUMAR OHRI, J

JULY 8, 2024

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